BEFORE THE

Federal Communications Commission

In the Matter of)
)
Petition for Clarification and)
Modification of Pay-Per-Call Rules)

RM 7990

REPLY COMMENTS
OF THE DIRECT MARKETING ASSOCIATION

The Direct Marketing Association ("DMA") submits these reply comments with respect to that part of the Petition of the National Association of Attorneys General ("NAAG") seeking assurances that pay-per-call services involving 800 prefixes must comply with the Commission's recently promulgated pay-per-call rules. The DMA actively participated in the underlying rulemaking proceeding and is generally supportive of the regulatory approach taken by the Commission.[1/] We submit these reply comments to emphasize that, although a regulatory response to the specific problem identified by the NAAG Petition may not be necessary, we endorse the principle underlying that petition: Consumers are entitled to be appropriately informed of the terms and conditions associated with pay-per-call service so that they can make an informed decision whether to avail themselves of the benefits of this service; and

1/ See Comments of Direct Marketing Association in CC Docket No. 91-65, filed April 24, 1991; Reply Comments of Direct Marketing Association in CC Docket No. 91-65, filed May 23, 1991.

this principle applies regardless of the prefix (e.g., 700, 800 or 900) through which pay-per-call service is originated. In support, the following is stated:

1. The specific problem raised by the NAAG comments involves the situation in which a consumer initiates a telephone call by means of a service customarily understood to be "free" (because the initial portion of the call involves 800 service) but is assessed a charge for the provision of additional information offered during the course of the call. It is a fundamental tenet of the direct marketing business, embodied in the DMA Telephone Guidelines, that

> All offers should be clear, honest and complete so that the customer will know the exact nature of what is being offered and the commitment involved in the placing of an order...

Simply put, consumers are entitled to know, before they pick up the phone, that the call they are about to place may result in the imposition of a charge.

2. The types of practice discussed in the NAAG Petition -- in which an 800 call is "migrated" into a pay-per-call service if the consumer wants additional information -- raise two policy questions regarding the adequacy of disclosure. All parties agree that the FCC's required preamble must be given at the point at which the call is converted from free to pay-per-call service. However, AT&T (among others) has pointed out that:

> As a result of the widespread use of 800 service, customers have legitimately come to expect that when they call an 800 number, they will not be charged for the call.

Comments of American Telephone and Telegraph Company in Docket RM 7990 at p. 3, filed July 8, 1992. Thus, the interposition of the Commission's required preamble at the point when the call is converted from an 800 to a pay-per-call service is not adequate. As a result, there is a serious prospect of consumer confusion -- and even deception. This is of great concern to the DMA. Confusion can lead to a loss of consumer confidence in the integrity of "toll-free" order placement, upon which many DMA members -- including direct response advertisers and catalog companies -- depend; and it can also lead to a decline in consumer confidence in the integrity of pay-per-call services that DMA members are increasingly using to provide goods and services to the public and for charitable purposes. See Comments of Direct Marketing Association, supra. n.1 at 2.

3. A formal regulatory response by the FCC may be unnecessary to deal with this matter. The comments disclose that AT&T, MCI and Sprint -- the principal providers of 800 service -- have adopted tariff modifications designed "to insure that callers are not charged for 800 service calls without their knowledge or consent." AT&T Comments, supra at p. 3. The tariffs generally provide that 800 service may not be used in a manner that would result in the calling party being charged for information conveyed during the call unless (i) the calling party has a pre-existing agreement to be charged or (ii) during the course of the call, the consumer is requested to disclose a credit or charge card number

to the information service provider. The rationale underlying this tariff solution is clear: where the consumer has been informed, as part of the pre-existing agreement, that a call originated as toll-free may be converted to pay-per-call service or where the consumer has made an informed decision to pay for additional information through voluntary provision of the credit card number, adequate disclosure exists.

4. The DMA does not oppose this form of tariff requirement. So long as tariff requirements do not impose unreasonable charges upon users (and therefore indirectly upon consumers), and are not anticompetitive or unduly intrusive upon legitimate business practices, and so long as the tariff requirements are enforced in a non-discriminatory fashion, we recognize that telephone companies are afforded considerable latitude in defining the terms and conditions of service that they offer. Tariffs that do not flatly prohibit the use of 800 service as a gateway to pay-per-call service satisfy these tests. They are, rather, narrowly tailored to assure that consumers are provided adequate disclosure of the nature of the information service they have been invited to purchase and have an opportunity to make an informed decision whether they wish to avail themselves of that service.

5. The tariff requirements are not the only possible mechanisms to assure that, before they pick up the phone, consumers are aware that some 800 calls may involve changes for additional information. For example, information service providers can -- and

we believe some do -- make full disclosure of their specialized use of 800 service as a "gateway" or prelude to the pay-per-call service in the advertising and promotional materials that they employ to make consumers aware of the service itself. These disclosures can be as effective as the tariff limitations in avoiding consumer confusion and preserving the integrity of both toll-free and pay-per-call service. And, unlike the tariff approach, disclosure of the terms and conditions of "mixed" free and pay-per-call service in promotional materials would afford consumers the added flexibility of paying for the service without the necessity of a pre-existing arrangement or disclosure of credit card information. Of course, in all cases -- and regardless of the form of initial disclosure -- the FCC's required preamble must be given at the point at which the call is converted to a pay service.

6. Accordingly, DMA believes that the principle underlying the NAAG Petition is correct: Before they pick up the phone, consumers are entitled to be appropriately informed of the terms and conditions associated with pay-per-call service and this principle applies regardless of whether the call originates on a toll-free or pay basis. However, given the alternative means by which this principle can be satisfied, the adoption of a narrow and specific rule may be both unnecessary and unwise. So long as information service providers and telephone companies employ some appropriate mechanism to assure that consumers are given notice -- before they pick up the phone -- that the call they are about to place may

result in the imposition of a charge and are afforded -- in advance of the call -- the opportunity to reach an informed decision whether they wish to avail themselves of the benefits of the service, the integrity of telecommunication services, and the interests of consumers and users are satisfied.

Respectfully submitted

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